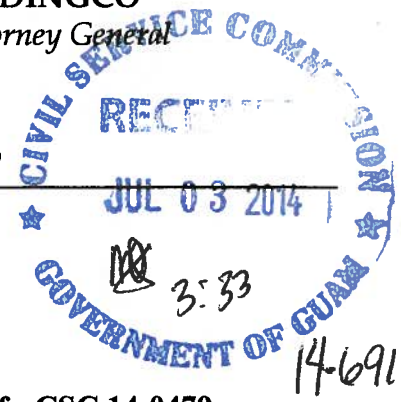


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July 3, 2014

INFORMATION AND GUIDANCE

Ref: CSC 14-0479

To: Executive Director, Civil Service Commission

From: Assistant Attorney General, Civil Division

Subject: Use of annual leave by government employees for political purposes

On June 9, 2014, you requested our opinion on two issues. First, whether a GovGuam employee can request and use his annual leave to participate in political activities such as rallies, fund raising and the like. Second, whether a GovGuam employee may park his vehicle carrying a large political sign in a parking space designated for government use. You cited us to 4 GCA 5101 and 5102, from the Mini-Hatch Act, regarding political activity by government employees.

The Mini-Hatch Act simultaneously protects an employee's right to engage in political activity away from his job and prohibits an employee from both using his authority to campaign and from campaigning during work hours. GCA 5101, et seq. An employee may not campaign at the workplace. 4 GCA 5106.

The First Amendment to the United States constitution guarantees all persons the right to participate in the political process, including government employees. Garcetti v. Ceballos, 547 U.S. 410, 417 (2004). However, to be protected, the employee's speech on a political matter must be on a matter of public concern and must not be outweighed by any injury the speech may cause to the efficiency of government operations. Waters v. Churchill, 511 U.S. 611, 675 (1994).

Garcetti, supra, sets forth a two pronged inquiry as to whether speech by a government employee is protected. First, did the employee speak as a citizen on a matter of public concern? Second, if the answer to the first question is yes, did the government possess an adequate justification for treating the employee differently from any other member of the public? Garcetti v. Ceballos, 547 U.S., at 418 Lane v. Franks, 2014 WL 2765285 (2014).

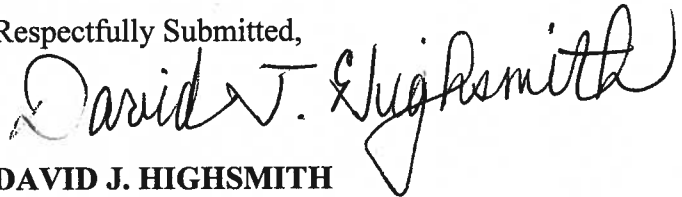
In both of the instances you inquire about, the employee would be speaking on a matter of public concern and the government cannot justify treating him differently from members of the public. These benign political activities are engaged in frequently by the general public and do not threaten government efficiency.

We believe that an employee may use his annual leave to participate in political activity. The government grants every employee annual leave to use as he sees fit and has little interest in how an employee spends his free time. It might be unconstitutional to prohibit an employee from spending his free time on political activities.

We further believe that an employee may park his truck bearing a political sign in a government slot so long as he does not campaign on behalf of a candidate while on the job. A sign does not differ from a bumper sticker expressing political preferences except for size. Since the sign remains outside the building, it is acceptable so long as the employee does not campaign on the agency premises.

We trust that this answers your inquiries.

Respectfully Submitted,

A handwritten signature in black ink that reads "David J. Highsmith". The signature is written in a cursive style with a large, stylized "D" and "H".

DAVID J. HIGHSMITH